

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1801 of 2012

Arising Out of Complaint Case No. 1058(C)/2003 Thana – District- PATNA

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1. Heera Kant Jha, S/O Late Ram Kishore Jha, Resident Of Village Bathai, P.S. Manigachhi, District Darbhanga, At Present Working As University Professor in the Department of Botany, Marwari College, Darbhanga.
 2. Lila Kant Jha, S/O Late Ram Kishore Jha, Resident of Village Bathai, P.S. Manigachhi, District Darbhanga, at present working as Clerk in District Treasury Office, Deoghar (Jharkhand).
 3. Beena Devi, W/O Sri Heera Kant Jha, Resident of Village Bathai, P.S. Manigachhi, District Darbhanga.
 4. Mona Jha, W/O Sri Lila Kant Jha, Resident Of Village Bathai, P.S. Manigachhi, District Darbhanga, at present residing at Deoghar, District Deoghar (Jharkhand).
 5. Bala Kant Jha @ Pawan Kumar Jha @ Bala Jha, S/O Sri Kanhaiya Jha, Resident of Village Bathai, P.S. Manigachhi, District Darbhanga.

.... Petitioners

Versus

1. The State Of Bihar
2. Ram Krishna Jha, S/O Late Satya Narayan Jha, Resident of Village Bathai, P.S. Manigachhi, District Darbhanga, at present Residing at Mohalla Makhdumpur, P.S. Digha, District Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 02-03-2015

The Petitioners seek quashing of the order of cognizance dated 16.08.2008 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 1058 (C) of 2003.

The case of the complainant is that there is enmity between the parties for the last 23 years since the accused persons had misappropriated his entire property and also committed murder of his



second wife and son. The trial is presently going on. In some other cases some of the accused persons are still absconding. As for the present occurrence, it is stated that the accused persons came with arms and started looking for him to commit his murder at which he ran away. But his nephew, aged about ten years, was kidnapped. The accused persons thereafter threatened him that if he will not withdraw the earlier case, his nephew would not be returned. His brother was assaulted by the accused persons, who committed theft of his personal property. When he approached the Officer-in-Charge of the local Police Station, he expressed his inability to intervene in the matter since the complainant was in the habit of complaining to the higher officials and hence did not institute any substantive case. It was then that the present complaint was filed.

Even though the complaint was instituted under Sections 323, 395 and 365/34 of the Indian Penal Code, cognizance was taken only under Section 448 of the Indian Penal Code.

The learned counsel for the petitioners submits that as stated in the complaint petition there is a long standing enmity between the parties on account of property dispute. This has led to institution of a number of cases by the complainant.



In some of which adverse remarks has been passed by the Court. With regard to the present complaint, the manner in which the complainant is harassing the petitioners is evident from the fact that earlier one Complaint Case No. 1861C of 2004 was instituted against the Petitioner Nos. 1, 3 and 5 and others with regard to kidnapping, extortion and dacoity. As against the order of the cognizance, the Petitioner nos. 1 and 3 moved before this Court vide Cr. Misc. No. 16149 of 2006, which matter was admitted for hearing on 31.10.2006 in which final order has been passed quashing the proceeding on 04.07.2013. This complaint which was filed three years earlier on 12.05.2013 was not pressed till such time as stay was not granted by this Court in the aforementioned case. It is evident from the allegation in the complaint petition that it is not only absurd but also malicious. The position of the petitioners is that the Petitioner No. 1 is a University Professor, the Petitioner No. 2 is a Clerk in the Treasury Office and Petitioner Nos. 3 and 4 are their wives.

On the other hand, the counsel for the complainant submits that the co-accused persons are declared absconders and despite the direction of this Court, they have not yet surrendered.

To this, the counsel for the petitioners



points out that after the aforesaid order was passed in November, 2011 they immediately moved an application under Section 482 Cr.P.C. on 10.01.2012 and subsequently they were given interim protection by this Court.

I find that even though one Bench of this Court directed the petitioners to surrender before the court below after having been declared absconder, another Bench of this Court gave them interim protection on account of the lapses of the counsels. However, on going through the facts of the complaint petition, I would be inclined to hold that land disputes between the parties has led to filing of this complaint petition. Also major portion of the complaint remained unsubstantiated on account of which cognizance was not taken under Section 395/368/34 I.P.C. but only under minor Sections allegations with regard to which it was loosely and routinely levelled.

Hence, the proceeding including the order of cognizance dated 16.08.2008 passed by the Judicial Magistrate 1st Class, Patna in Complaint Case No. 1058 (C) of 2003.

However, the quashment of the proceeding shall have no bearing on any other claims to the parties in any manner.

The Application stands allowed.

(Anjana Prakash, J.)

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